IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09/12/2002

CORAM

THE HON'BLE MR.JUSTICE P.K. MISRA

WRIT PETITION No.12912 of 1999

M. Arunajalathai ... Petitioner

-Vs-

1. Director of Elementary Education,
Chennai.6.

2. District Elementary Educational
Officer, Chennai.6.

3. Additional Assistant Elementary
Educational Officer,
Perambur Range,
11, Davindsingh Street,
Chennnai.1.

4. Correspondent,
Singaram Pillai Primary School,
Villivakkam, Chennai.49. ... Respondents

Writ Petition under Article 226 of the Constitution of India filed for issue of writ of certiorarified as stated therein.

For Petitioner : Mr.T. Chellapandian for
Mr.C.Selvaraju

For Respondents 1 to 3: Mr.P.S.Siva Shanmugasundaram,
Addl.Govt. Pleader.

For Respondent-4 : No appearance

:O R D E R

Heard the learned Counsel appearing for the petitioner and the Additional Government Pleader for Respondent Nos. 1 to 3.

2. In this writ petition, the petitioner has prayed for issue of a writ of certiorarified mandamus to quash the proceedings of the second respondent in Na.Ka.No.778/A5/98 dated 22.04.1998 and the consequential order of the fourth respondent in proceedings No.Nil dated 25.06 .1998 and to direct the respondents to sanction two sets of incentive increments to the petitioner for acquiring M.A. and B.Ed., Degrees.

3. The petitioner was appointed as Secondary Grade Teacher in the fourth respondent school. Subsequently, he passed M.A. Degree in the year 1994 and B.Ed., in 1996 from Annamalai Open University System. In view of the subsequent acquisition of higher qualifications, the petitioner was sanctioned two sets of incentive increments in June, 199 7. The incentive increments amounts had been paid to the petitioner. Subsequently, under the impugned proceedings in Na.Ka.No.778/A5/98 dated 22.04.1998, the second respondent, namely, the District Elementary Educational Officer, cancelled the incentive increments and directed that the incentive increments amounts already paid to the petitioner should be recovered. Pursuant to the aforesaid order, the

fourth respondent-Management issued the consequential order dated 25.06.199 8 and the amounts were recovered. These actions of respondents 2 and 4 have given rise to the present writ petition.

4. In the impugned proceedings passed by the second respondent, the only reason given is that the petitioner is not eligible to receive the incentive increments. In the counter affidavit, it has been indicated that the petitioner had passed M.A. and B.Ed., from Annamalai Open University Scheme and such higher qualifications from Open University Scheme, even though recognised for the purpose of employment, were not recognised for the purpose of grant of incentive increments. It has been further indicated that subsequently, the Government have issued G.O.Ms.No.307 School Education (E2) Department dated 15.12.200 0 extending the benefit of incentive increment to the persons who have acquired their qualifications from the Open University System throughout the Tamil Nadu recognised by the University Grants Commission. It has been indicated that such benefit would be available from the date of the issue of the order dated 15.12.2000.

5. The question of grant of incentive increment has been laid down in G.O.Ms.No.42, Education, dated 10.01.1969, wherein it has been indicated that any Secondary Grade Teacher who acquires higher qualification, is entitled to incentive increment. At that time when the principle was laid down in G.O.Ms.No.42, Education, dated 10.01.1969, no occasion had arisen to consider whether such benefit would be available to the persons who acquire higher qualification from the Open University System. The matter was considered only in 1993. The question relating to grant of incentive increment to the persons who have acquired higher qualification from Mysore Open University in the State of Karnataka, came up for consideration in G.O.Ms.No.1024, Education, Science & Technology Department, dated 09.12.1993, and it was clarified that such incentive increment would be available to the persons who had acquired higher qualification from Mysore Open University. The question relating to recognition of Decree granted by Annamalai Open University Scheme was considered in G.O.Ms.No.216 Personnel & Administrative Reforms (R) Department dated 26.08.1997 and it was ordered that Degree, Post Graduate Degree and Diploma Certificates issued by the Annamalai Open University System would be treated equivalent to that of the Annamalai University in Regular steam for appointment in public Services. In other words, the persons who have acquired Degrees from Annamalai Open University Scheme, even though had no formal qualification in the Regular Stream, would be considered eligible for the purpose of appointment in Public Services. It is not disputed that the Degrees issued by Annamalai Open University Scheme have been recognised by University Grants Commission.

6. It is obvious that the initial sanction of the incentive increments to the petitioner was on the basis of the G.O.Ms.No.216 Personnel & Administrative Reforms (R) Department dated 26.08.1997, whereunder the Government have accepted the Degrees issued by Annamalai Open University Scheme as equivalent to that of the Annamalai University in Regular Stream. Subsequently, the incentive increments already paid have been withdrawn, possibly because it was thought that even though such Degrees from Annamalai Open University Scheme would entitle a person to get appointment in public services, such Degrees would not make such person eligible to get the incentive increment in the absence of any specific order of the Government. The learned Additional Government Pleader has also submitted that in fact, the Government have subsequently clarified that such person who acquired such higher qualification from Open University recognised by the University Grants Commission, would be eligible to receive the incentive increment from the date of the said subsequent G.O., namely, G.O.Ms.No.307 dated 15.12.2000.

7. In the aforesaid background, the learned Counsel appearing for the petitioner submitted that once it was decided by the Government in 1997 that the Degrees obtained from Annamalai Open University Scheme would be recognised for the purpose of appointment in public services, there is no justification in contending that such recognition of the degrees would be only for the purpose of appointment, but not for the purpose of sanction of incentive increments. It is further submitted that at any rate, the Government having accorded such benefit to the persons who have acquired higher qualification

from the Mysore Open University, could not discriminate against the persons who acquired such qualification from Annamalai Open University situate in Tamil Nadu itself, particularly, when the Degrees issued by Annamalai Open University are recognised by the University Grants Commission and there is no qualitative difference between the Degrees granted by the Mysore Open University and the Annamalai Open University.

8. It is not disputed that the persons, who have acquired higher qualification from Mysore Open University, even though without any formal Graduate Degree through Regular Stream, have been given the incentive increments. It is also not disputed that the Degrees issued by Annamalai Open University have been recognised by the University Grants Commission and also by the State. In such view of the matter, there is no logic in contending that the persons who have passed from Annamalai Open University would be eligible to get the incentive increment only with effect from 15.12.2000 and not from the earlier period. Since such persons who had acquired Degrees from the Annamalai Open University were considered eligible for appointment in public services as per G.O.Ms.No.216 Personnel & Administrative Reforms (R) Department dated 26.08.1997, at least from that date such persons would be entitled to get the incentive increments. To deprive them of the benefit would amount to discrimination vis-a-vis persons who have acquired higher qualification from a similar System, namely, from Mysore Open University.

9. The learned Additional Government Pleader submitted that subsequent G.O.Ms.No.307 School Education (E2) Department dated 15.12.2000 has not been challenged by the petitioner. It is well settled that any Provisions contained in any Act, Statutory Rules or even Administrative Instruction should be construed in consonance with the Provisions, particularly, Article 14, contained in the Constitution of India. G.O.Ms.No.307 dated 15.12.2000 appears to be clarificatory in nature. When the Government have already extended the benefit of the Degrees from the Annamalai Open University for the purpose of appointment in public services, there is no justification in denying such Degree for the purpose of grant of incentive increments in public services.

10. The learned Additional Government Pleader has relied on the decision rendered in W.P.Nos.1256 and 5657 of 1999 dated 25.04.2002 to the effect that person acquiring M.A. Degree from the Open University System is not entitled to claim promotion. In the present case, the Government have already recognised the right of the person passing from Mysore Open University for the purpose of giving incentive increments and since there is no difference between the Degrees issued by the Mysore Open University and Annamalai Open University and since the Degrees issued by Annamalai Open University have been recognised by the State Government and University Grants Commission, there cannot be any justification to deny such incentive benefits. The decision cited above is distinguishable, as similar question never came up for consideration in that case.

11. Apart from above, there is also justification in the contention of the Counsel appearing for the petitioner that assuming that the benefit which was not available had been granted, there is no justification for the Government to withdraw the same. The benefit had been granted by the Government itself and the amount had already been disbursed. Even assuming

that such amount has been paid to the petitioner on an erroneous basis, the error, if any, was of the Government and not of the petitioner and as such, the Government is estopped from recovering the amount already disbursed to the petitioner.

12. For the aforesaid reasons, the writ petition is allowed and it is ordered that the amount already recovered should be refunded and further all the arrears should be paid within a period of four months. No costs.

Index:Yes
Internet:Yes
To
1. The Director of Elementary Education,
Chennai.6.

2. The District Elementary Educational Officer,
Chennai.6.

3. The Additional Assistant Elementary Educational Officer,
Perambur Range,
11, Davindsingh Street,
Chennnai.1.

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